UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RICHARD G. SUGDEN,

Plaintiff,

v.

AMERICAN AVIONICS, INC.,

Defendant.

Case No. C05-936RSL

ORDER GRANTING DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT

This matter comes before the Court on a motion for partial summary judgment filed by defendant American Avionics, Inc. ("American"). Plaintiff Richard G. Sugden ("Sugden") alleges breach of contract, negligent misrepresentation, negligence, and violations of Washington's Consumer Protection Act. Plaintiff seeks relief including reimbursement of legal expenses incurred in an enforcement action against him by the Federal Aviation Administration ("FAA"). American moves to dismiss plaintiff's claims for damages arising out of the enforcement action. (Dkt. # 16). For the reasons set forth below, the Court grants the motion.

I. FACTS

The following facts are either undisputed or, where a dispute exists, resolved in plaintiff's favor. In November 2001, Sugden brought his Grumman Turbine Mallard

airplane, federal registration number N730RS ("the airplane"), to American for extensive work. Declaration of Rulon Horsley (Dkt. # 18) at ¶ 5. Even after "running into numerous ... problems" American stated that "a realistic completion date is the middle of February." Id., Ex. 3. After several additional lengthy delays in the work, American informed Sugden that the airplane would be ready by May 22, 2002. Declaration of Richard G. Sugden ("Sugden Decl.") (Dkt. # 24) at ¶ 3. When Sugden arrived at American's facility on May 22 the airplane was not yet ready, and over the next two days he participated in working on it. Id. at ¶¶ 3-4. On May 24, 2002, Sugden flew the airplane to Idaho. Id. at ¶¶ 9-10. American gave no indication that the airplane was unsafe or illegal to fly, and its employees helped Sugden prepare for departure and waved goodbye. Declaration of G. Val Tollefson ("Tollefson Decl.") (Dkt. # 17), Ex. P at p. 152. Furthermore, shortly before Sugden flew away, FAA-certified aircraft inspector Robert Taylor ("Taylor") gave Sugden a sticker for the airplane's log book stating that the airplane was "approved for return to service" after its required periodic inspection. Sugden Decl., Ex. 1.

As the owner and operator of the airplane, Sugden was legally required to ensure that certain entries were made in the aircraft maintenance records before flying the airplane. 14 C.F.R. §§ 91.405-407.[1] Sugden stated, in testimony before the FAA, that he

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[1]The regulations provide in pertinent part:
§ 91.405 Maintenance required.
Each owner or operator of an aircraft ... (b) Shall ensure that maintenance personnel make appropriate entries in the aircraft maintenance records indicating the aircraft has been approved for return to service[.]
§ 91.407 Operation after maintenance, preventive maintenance, rebuilding, or alteration.
(a) No person may operate any aircraft that has undergone maintenance, preventive maintenance, rebuilding, or alteration unless–
(1) It has been approved for return to service by a person authorized under § 43.7

did not look at the airplane log book to check for entries related to the work American had done. Tollefson Decl., Ex. P at p. 149-150.

The FAA commenced an enforcement action soon after the airplane left American's facility. The FAA became aware that the airplane had departed, and American told the FAA that the airplane had been "un-airworthy" [sic] when it left. Declaration of Christian Moller (Dkt. # 23), Ex. C. The FAA suspended Sugden's pilot license, ruling that he had violated regulations requiring that he ensure the existence of certain maintenance entries and prohibiting unsupervised maintenance. Tollefson Decl., Ex. L at p. 1. The National Transportation Safety Board ("NTSB") affirmed, slightly reducing the license suspension period. Id., Ex. B at p. 212. Sugden appealed to the Ninth Circuit, and ultimately the parties settled. Id., Ex. L. at p.1. Without agreeing to the FAA's factual assertions or legal conclusions, Sugden agreed to withdraw all appeals. Id. at p. 2. The settlement terms specifically disclaimed any collateral estoppel or *res judicata* effect of the FAA proceedings on any other litigation.[2] Id.

II. DISCUSSION

A. Summary Judgment Standard.

On a motion for summary judgment, the Court must "view the evidence in the light most favorable to the nonmoving party and determine whether there are any genuine

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of this chapter; and
(2) The maintenance record entry required by § 43.9 or § 43.11, as applicable, of this chapter has been made.

[2]The settlement provides that "nothing in this settlement, nor in the Orders referenced herein shall inure to the benefit of any third parties nor shall any part of this settlement, including such orders be deemed to be an admission against Respondent's interest, nor shall it be deemed to be collateral estoppel or *res judicata* except in a proceeding by the FAA to enforce the term and conditions of this settlement as the order referenced herein."

issues of material fact." Holley v. Crank, 386 F.3d 1248, 1255 (9th Cir. 2004). All reasonable inferences supported by the evidence are to be drawn in favor of the nonmoving party. See Villiarimo v. Aloha Island Air, Inc., 281 F.3d 1054, 1061 (9th Cir. 2002). "[I]f a rational trier of fact might resolve the issues in favor of the nonmoving party, summary judgment must be denied." T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n, 809 F.2d 626, 631 (9th Cir. 1987).

B. Reimbursement of Legal Expenses.

A federal court exercising diversity jurisdiction applies the substantive law of the state in which it sits. Erie R.R. Co. v. Tompkins, 304 U.S. 64, 78 (1938). Under Washington law, a party is not liable for an opposing party's legal expenses arising from a separate action, unless it is solely responsible for the opposing party's exposure to the separate action. Tradewell Group, Inc. v. Mavis, 71 Wn. App. 120, 128 (1993); Woodley v. Benson & McLaughlin, P.S., 79 Wn. App. 242, 248 (1995). The "ABC rule" states that A will be liable for B's litigation expenses if a wrongful act or omission by A toward B exposes B to litigation with C, and C was not connected with A's initial wrongful act or omission. Woodley, 79 Wn. App. at 246. However, "[i]f Party A's conduct is not the only cause of Party B's involvement in the litigation, and particularly if Party B's own conduct contributed to Party B's exposure in the litigation," Party B cannot recover litigation expenses. Id.

In the FAA proceedings, Sugden acknowledged that he did not check the airplane's log books to see if required maintenance entries had been made. Tollefson Decl., Ex. P at p. 149-150. In the case before this Court, plaintiff has not retracted that statement or disputed its truth. Nor has he disputed the admissibility of that testimony. While on a summary judgment motion reasonable inferences will be drawn in favor of the

nonmoving party, here no factual dispute exists. By not examining the log books to determine if the required entries had been made, plaintiff exposed himself to the possibility of an FAA enforcement action. Thus, as a matter of law, defendant could not have been the sole cause of plaintiff's exposure to that litigation.

Plaintiff argues that his reliance on inspector Robert Taylor's "return to service" sticker presents a genuine issue of material fact that makes summary judgment inappropriate. Furthermore, he argues that but for American's failure to inform him that the airplane was unairworthy, he would not have been exposed to the FAA litigation. Neither of these issues excuses plaintiff's breach of the affirmative duty to ensure log book entries had been made.

FAA regulations require that "each person" who maintains or alters an aircraft "shall make an entry in the maintenance record [describing the] work performed." 14 C.F.R. § 43.9. Plaintiff was required to check for log book entries related to all maintenance and alterations that had been done, not just entries related to the inspection. 14 C.F.R. § 91.405(b). Unless plaintiff believed that Taylor was responsible for all the work performed by American, Taylor's "return to service" sticker is not relevant to the present motion. Plaintiff has not asserted that belief, nor would the record support such an assertion. Plaintiff hired American to perform the major work on the airplane, and Taylor was not an American employee. Sugden Decl. at ¶ 2. Plaintiff could not reasonably rely on Taylor's sticker to cover American's work.

Plaintiff argues that his good-faith reliance on American's implied representations that the airplane was airworthy presents a genuine issue of material fact. Plaintiff cites a case where a pilot reasonably relied on an aircraft mechanic's representations of airworthiness. Swan v. Adm'r, NTSB Order No. EA-4308 (1994). That case is readily

distinguished from this one by the existence of log book entries. While certain technical deficiencies existed, the pilot's underlying duty to ensure that maintenance personnel made appropriate entries in the log book was not breached. Id. at p. 1. In the case before this Court, the entries for American's work were totally absent.

In short, plaintiff's admitted failure to ascertain whether appropriate log book entries had been made violated the plain language of 14 C.F.R. §§ 91.405-407. He exposed himself to potential FAA enforcement proceedings, and thus does not meet Washington's strict standard for recovering attorney's fees. Woodley, 79 Wn. App. 242.

C. Collateral Estoppel.

Because the Court finds, as a matter of law, that plaintiff's own actions were at least a partial cause of the FAA enforcement action, the parties' arguments regarding collateral estoppel need not be addressed.

III. CONCLUSION

For the foregoing reasons, the Court GRANTS defendant's motion for partial summary judgment (Dkt. # 16). Plaintiff's claims for litigation expenses incurred in the FAA enforcement action are dismissed.

DATED this 10th day of May, 2006.

Robert S. Lasnik
United States District Judge